

By: Clardy

H.B. No. 2397

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a sales and use tax refund and franchise tax credit for  
3 certain businesses that make investments in qualified opportunity  
4 zones.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter I, Chapter 151, Tax Code, is amended  
7 by adding Section 151.4292 to read as follows:

8 Sec. 151.4292. TAX REFUNDS FOR BUSINESS IN ECONOMIC  
9 OPPORTUNITY ZONE. (a) In this section:

10 (1) "Economic opportunity zone" has the meaning  
11 assigned by Section 171.9261.

12 (2) "Qualifying business entity" means an entity that  
13 is eligible to receive a tax credit under Subchapter W, Chapter 171.

14 (b) After the qualifying business entity becomes eligible  
15 to receive a tax credit under Subchapter W, Chapter 171, and subject  
16 to Subsection (c), the entity is eligible for a one-time refund of  
17 the sales and use taxes paid by the entity for the purchase of:

18 (1) building materials to remodel, rehabilitate, or  
19 construct a structure owned or leased by the entity that is located  
20 in the economic opportunity zone and that is the basis for the  
21 entity's eligibility for the tax credit under Subchapter W, Chapter  
22 171;

23 (2) labor to remodel, rehabilitate, or construct a  
24 structure owned or leased by the entity that is located in the

1 economic opportunity zone and that is the basis for the entity's  
2 eligibility for the tax credit under Subchapter W, Chapter 171; and  
3 (3) equipment or machinery to be located in, or used in  
4 the operation of, a structure owned or leased by the entity that is  
5 located in the economic opportunity zone and that is the basis for  
6 the entity's eligibility for the tax credit under Subchapter W,  
7 Chapter 171.

8 (c) The amount of the one-time refund paid to a qualifying  
9 business entity under this section may not exceed the lesser of:

10 (1) 25 percent of the total amount of sales and use  
11 taxes paid by the business entity on purchases described by  
12 Subsection (b); or

13 (2) \$50,000.

14 (d) A qualifying business entity must apply to the  
15 comptroller to receive a refund authorized under this section on a  
16 form prescribed by the comptroller.

17 (e) The comptroller may adopt rules to implement and  
18 administer this section.

19 SECTION 2. Chapter 171, Tax Code, is amended by adding  
20 Subchapter W to read as follows:

21 SUBCHAPTER W. TAX CREDIT FOR INVESTMENT IN ECONOMIC OPPORTUNITY  
22 ZONE

23 Sec. 171.9261. DEFINITIONS. In this subchapter:

24 (1) "Economic opportunity zone" means a population  
25 census tract that, as of September 1, 2019, was designated as a  
26 qualified opportunity zone under Public Law No. 115-97.

27 (2) "Qualifying investment" means an investment to:

1           (A) remodel, rehabilitate, or construct a  
2 structure owned or leased by the entity that is located in an  
3 economic opportunity zone; or

4           (B) purchase equipment or machinery to be located  
5 in, or used in the operation of, a structure owned or leased by the  
6 entity that is located in an economic opportunity zone.

7           Sec. 171.9262. ELIGIBILITY FOR CREDIT. An entity is  
8 eligible to apply for a credit in the amount and under the  
9 conditions provided by this subchapter against the tax imposed  
10 under this chapter.

11           Sec. 171.9263. QUALIFICATION. An entity qualifies for a  
12 credit under this subchapter if the entity makes a qualifying  
13 investment:

14                   (1) on or after September 1, 2019; and

15                   (2) in an amount that is at least \$100,000.

16           Sec. 171.9264. CERTIFICATION OF ELIGIBILITY. (a) Before  
17 claiming, selling, or assigning a credit under this subchapter, the  
18 entity that made the qualifying investment must request from the  
19 comptroller a certificate of eligibility on a form prescribed by  
20 the comptroller. The entity must include with the entity's request  
21 information sufficient to allow the comptroller to determine  
22 whether the entity has made a qualifying investment under this  
23 subchapter. At a minimum, the entity must provide documentation  
24 certified by the chief financial officer of the entity  
25 demonstrating:

26                   (1) the total amount of the qualifying investment made  
27 by the entity; and

1           (2) the date on which the qualifying investment was  
2 made.

3           (b) The comptroller shall issue a certificate of  
4 eligibility to an entity that has made a qualifying investment  
5 under this subchapter.

6           (c) An entity that sells or assigns a credit under this  
7 subchapter to another entity shall provide a copy of the  
8 certificate of eligibility to the purchaser or assignee.

9           Sec. 171.9265. AMOUNT OF CREDIT; LIMITATIONS. (a) Subject  
10 to Subsections (b) and (c), the amount of the credit under this  
11 subchapter is equal to 25 percent of the total amount of the  
12 qualifying investment.

13           (b) An entity may not claim more than one credit under this  
14 subchapter.

15           (c) The total credit claimed for a report, including the  
16 amount of any carryforward under Section 171.9266, may not exceed  
17 the amount of franchise tax due for the report after any other  
18 applicable tax credits.

19           (d) A qualifying investment may be counted only once in  
20 determining the amount of the tax credit available, and more than  
21 one entity may not claim a credit for the same qualifying  
22 investment.

23           Sec. 171.9266. CARRYFORWARD. (a) If an entity is eligible  
24 for a credit that exceeds the limitation under Section 171.9265(c),  
25 the entity may carry the unused credit forward for not more than  
26 five consecutive reports.

27           (b) A carryforward is considered the remaining portion of a

1 credit that cannot be claimed in the current year because of the  
2 limitation under Section 171.9265(c).

3 Sec. 171.9267. APPLICATION FOR CREDIT. (a) An entity must  
4 apply for a credit under this subchapter on or with the report for  
5 the period for which the credit is claimed.

6 (b) An entity shall file with any report on which the credit  
7 is claimed a copy of the certificate of eligibility issued by the  
8 comptroller under Section 171.9264 and any other information  
9 required by the comptroller to sufficiently demonstrate that the  
10 entity is eligible for the credit.

11 (c) The burden of establishing eligibility for and the value  
12 of the credit is on the entity.

13 Sec. 171.9268. SALE OR ASSIGNMENT OF CREDIT. (a) An entity  
14 that makes a qualifying investment may sell or assign all or part of  
15 the credit that may be claimed for that investment to one or more  
16 entities, and any entity to which all or part of the credit is sold  
17 or assigned may sell or assign all or part of the credit to another  
18 entity. There is no limit on the total number of transactions for  
19 the sale or assignment of all or part of the total credit authorized  
20 under this subchapter, however, collectively all transfers are  
21 subject to the limitations provided by Section 171.9265.

22 (b) An entity that sells or assigns a credit under this  
23 section and the entity to which the credit is sold or assigned shall  
24 jointly submit written notice of the sale or assignment to the  
25 comptroller on a form promulgated by the comptroller not later than  
26 the 30th day after the date of the sale or assignment. The notice  
27 must include:

1           (1) the date of the sale or assignment;

2           (2) the amount of the credit sold or assigned;

3           (3) the names and federal tax identification numbers  
4 of the entity that sold or assigned the credit or part of the credit  
5 and the entity to which the credit or part of the credit was sold or  
6 assigned; and

7           (4) the amount of the credit owned by the selling or  
8 assigning entity before the sale or assignment, and the amount the  
9 selling or assigning entity retained, if any, after the sale or  
10 assignment.

11           (c) The sale or assignment of a credit in accordance with  
12 this section does not extend the period for which a credit may be  
13 carried forward and does not increase the total amount of the credit  
14 that may be claimed.

15           (d) Notwithstanding the requirements of this subchapter, a  
16 credit earned or purchased by, or assigned to, a partnership,  
17 limited liability company, S corporation, or other pass-through  
18 entity may be allocated to the partners, members, or shareholders  
19 of that entity and claimed under this subchapter in accordance with  
20 the provisions of any agreement among the partners, members, or  
21 shareholders, provided that the entity that claims the credit must  
22 be subject to the tax imposed under this chapter.

23           Sec. 171.9269. RULES. The comptroller shall adopt rules  
24 necessary to implement and administer this subchapter.

25           SECTION 3. Subchapter W, Chapter 171, Tax Code, as added by  
26 this Act, applies only to a report originally due on or after the  
27 effective date of this Act.

1 SECTION 4. This Act takes effect January 1, 2020.